

No. _____

IN THE
Supreme Court of the United States

WILLIAM GREG THOMAS,

Petitioner,

v.

ATTORNEY GENERAL, STATE OF FLORIDA, et al.

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit*

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

The questions presented are:

1. When a court determines that a court-appointed CJA counsel “sacrificed [Petitioner’s] guaranteed opportunity of federal habeas review” by intentionally filing a federal habeas petition untimely, does it comport with due process forgive the untimely filing on the grounds of equitable tolling, but then saddle Petitioner with a habeas petition prepared by an attorney who was sacrificing Petitioner’s right to federal habeas review of his claims?
2. Does it violated due process for courts to limit the federal habeas review of a Petitioner’s challenges to his conviction and death sentence to just those presented by an attorney who “acted in bad faith and abdicated her duty of loyalty to [Petitioner] so that she could promote her own interests?

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Constitutional Provisions

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U.S. Const. amend. XIV 1, passim

NOTICE OF RELATED CASES

Pursuant to Supreme Court Rule 14.1(b) (iii), the following cases relate to this petition:

Trial:

Circuit Court of Duval County, Florida

State v. Thomas, Case No. 93-5394 CF

Judgment Entered: July 22, 1994

Direct Appeal:

Florida Supreme Court, Case No. SC60-84256

Thomas v. State, 693 So.2d 951 (Fla. 1997)

Opinion Issued: March 20, 1997

Initial Postconviction:

Florida Supreme Court, Case No. SC01-1439

Thomas v. State, 838 So. 2d 535 (Fla. 2003)

Opinion Issued: January 30, 2003

2nd Postconviction:

Florida Supreme Court, Case No. SC17-809

Thomas v. State, 234 So. 3d 559 (Fla. 2018)

Opinion Issued: January 24, 2018

3rd Postconviction:

Florida Supreme Court, Case No. SC18-48

Thomas v. State, 260 So.3d 226 (Fla. 2018)

Opinion Issued: December 28, 2018

State Habeas:

Florida Supreme Court, Case No. SC17-2268

Thomas v. Jones, 2018 WL 3198373 (Fla. 2018) (unpublished)

Order Issued: June 29, 2018

Prior 11th Circuit Decision Remanding:

Eleventh Circuit, Case No. 13-14635

Thomas v. Attorney General, 795 F.3d 1286 (11th Cir. 2015)

Opinion Issued: July 31, 2015

PETITION FOR A WRIT OF CERTIORARI

Petitioner, William Greg Thomas, is a condemned prisoner in the State of Florida. Petitioner respectfully requests that this Honorable Court issue a writ of certiorari to review the Eleventh Circuit's denial of Petitioner's motion to relinquish jurisdiction.

DECISION BELOW

The Eleventh Circuit's opinion affirming the denial of habeas relief appears as *Thomas v. Attorney General*, 992 F.3d 1162 (11th Cir. 2021), and is attached as Attachment A. The Eleventh Circuit's order denying panel rehearing issued on May 17, 2021, and is attached as Attachment B. The Eleventh Circuit's order denying Petitioner's motion to relinquish jurisdiction issued September 25, 2018, and is attached as Attachment C.

After the district court on February 6, 2018, issued an order finding that Petitioner was entitled to equitable tolling, Petitioner's filed a motion for leave to amend the habeas petition with claims that Bonner had failed to discover and/or plead. On July 31, 2018, the district court entered an order that deferred ruling on the motion for leave to amend until the Eleventh Circuit had ruled on a motion to determine jurisdiction and to relinquish jurisdiction to the district court. This order is attached as Attachment D.

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and asks that it his Petition and issue a writ of certiorari to the Eleventh Circuit Court of Appeals in order to review the Eleventh Circuit's failure to relinquish jurisdiction to the district court in order to permit Petitioner to amend his habeas

petition with claims that his prior court-appointed CJA counsel failed to develop and present in his petition for a writ of habeas corpus which was filed on March 22, 2004. The Eleventh Circuit found that Petitioner's prior court-appointed CJA counsel, Mary Bonner:

sacrificed Thomas's guaranteed opportunity of federal habeas review in order to pursue her own novel—and ultimately meritless—constitutional argument against AEDPA's limitations period. Bonner's personal goals not only failed to benefit Thomas (or other, non-party capital defendants), they were clearly adverse to his interests in the case. Considering the entire record, we find that Bonner acted in bad faith and abdicated her duty of loyalty to Thomas so that she could promote her own interests. Those interests were so adverse to those of her client that Bonner effectively abandoned Thomas.

Thomas v. Attorney General, 992 F.3d at 1184 (emphasis added). The Eleventh Circuit reviewing the district court's finding *de novo* held that because Bonner “sacrificed Thomas's guaranteed opportunity of federal habeas review”, Thomas was entitled to equitable tolling of the one-year statute of limitations. This meant that the untimely habeas petition that Bonner had filed would be treated as a timely filed petition, but unfortunately this left Thomas saddled with the habeas petition drafted by Bonner who had been acting in bad faith in order to promote her own interests.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides, in relevant part:

Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I. State court proceedings as to conviction and death sentence subject to federal habeas review

Petitioner is currently held in state custody on his convictions of burglary with a battery, kidnapping, the murder of his wife Rachel Thomas, and on his separate conviction of the murder of his adoptive mother Elsie Thomas (Doc. 13 at 6). The conviction and death sentence were affirmed on direct appeal. *Thomas v. State*, 693 So. 2d 951 (Fla. 1997). Accordingly, Petitioner is housed on Florida's death row at Union Correctional Institution.

The state court's appointed an attorney to represent Petitioner in post conviction proceedings in state court. An incomplete Rule 3.851 motion was filed. It asserted that collateral counsel had not yet be given access to the public records needed to properly investigate for post conviction claims. Without ever filing anything further, the court-appointed collateral counsel announce that he had developed a conflict and needed to withdraw. New collateral counsel was appointed by the state courts. He too did not review the public records and ascertain whether those records revealed either a *Brady* violation or an ineffective assistance of trial counsel claim. The meager amended Rule 3.851 motion filed by the replacement collateral counsel was denied by the state circuit court. On appeal, the denial was affirmed by the Florida Supreme Court. *Thomas v. State*, 838 So. 2d 535 (Fla. 2003).

II. Facts Relevant To The Federal Court's Denial Of The Motion For Leave to Amend Which Limited The Federal Habeas Review To Only The Claims Raise By The Attorney Who Was Acting In Bad Faith, Had Abdicated Her Duty Of Loyalty To Petitioner, And Was Pursuing Her Person Goals Which Were Clearly Adverse To Petition.

The replacement collateral counsel not wanting to represent Petition in federal court, recruit Bonner who sought to be appointed as Petitioner's CJA counsel charged with pursuing federal habeas relief on Petitioner's behalf.

The district court and the Eleventh Circuit both concluded that Bonner "had developed an interest in challenging the constitutionality of the AEDPA deadline based on her own belief that the one-year statute of limitations did not allow sufficient time for investigation and preparation of a petition for writ of habeas corpus." *Thomas v. Attorney General*, 992 F.3d at 1183. The Eleventh Circuit specifically agreed with the district court's finding that "Bonner's pattern of intentional, unconscionable conduct ... extends well beyond the gross negligence described in *Cadet*— it reaches into the depths of abandonment". *Thomas v. Attorney General*, 992 F.3d at 1183. The Eleventh Circuit concluded that "Bonner sacrificed Thomas's guaranteed opportunity of federal habeas review in order to pursue her own novel— and ultimately meritless— constitutional argument against AEDPA's limitations period." *Id.* at 1184.

After the district court ruled that Petitioner was entitled to equitable tolling, Petitioner filed a motion for leave to amend the habeas petition to include constitutional claims that Bonner failed to investigate and present in the habeas petition. On August 24, 2018, the district court deferred ruling on the motion until

after the Eleventh Circuit had ruled on a motion to relinquish jurisdiction to the district court so that it could consider the motion to amend. On September 26, 2018, the Eleventh Circuit denied Petitioner's request for jurisdiction be relinquished to the district court so that it could rule on the motion for leave to amend.

Petitioner has no quarrel with the factual determination made by the Eleventh Circuit on a *de novo* basis that "Bonner acted in bad faith and abdicated her duty of loyalty to Thomas so that she could promote her own interests. Those interests were so adverse to those of her client that Bonner effectively abandoned Thomas." Bonner clearly did "sacrifice[]Thomas's guaranteed opportunity of federal habeas review in order to pursue her own [agenda]."

REASONS FOR GRANTING THE WRIT

Courts draw their power from the confidence the public has in the wisdom and the reliability that are reflected in the decisions rendered by the courts. One could argue that in the United States, the public's faith in the judiciary rests on its strong and historical commitment to due process which often means fundamental fairness. The Due Process Clause has come to reflect the United States Constitution's command that judicial proceedings must embody fundamentally fairness and the courts must be seeking fundamentally fair outcomes.

It is true that fundamental fairness may be somewhat aspirational and like beauty, something in the eye of the beholder, or even a matter that we all know when we see it. But within fundamental fairness, there is the matter of equal

treatment. Also there is the notion to be fundamentally fair judicial rulings should reflect that judiciary's commitment to logic and rational thought.

It is here where the Eleventh Circuit's decision in seems to flounder. It just basic logic that when an attorney has a conflict, she gets off the case completely. If an attorney has a conflict interest, everything the attorney does is suspect. And here, the Eleventh Circuit found Bonner was much more than conflicted. She was actually pushing her personal interest which the Eleventh Circuit said "was so adverse to those of her client that Bonner effectively abandoned Thomas." *Thomas v. Attorney General*, 992 F.d at 1184. So at the point in time that her personal interest was so adverse to Thomas that Bonner effectively abandoned Thomas, that is when she drafted and filed Thomas' habeas petition. How can the habeas petition that Bonner drafted be treated as legitimate which limits the scope of the habeas review that Thomas has received? It makes no sense.

The unfairness of saddling Thomas with the habeas petition drafted by Bonner is also apparent when consideration is given to the Eleventh Circuit's ruling in *Brown v. Sec., Dep't of Corr.*, 750 Fed. Appx. 915 (11th Cir. 2018). There, Bonner had been appointed to represent another death sentenced defendant. And there as here, Bonner was found to have engaged in misconduct for a longer time period. And the attorney that replaced Bonner was also found to have engaged in serious misconduct. In *Brown*, the Eleventh Circuit concluded that Brown had exercised due diligence and remanded to the district court, and suggested that the district court should grant Brown's motion for leave to amend. *Brown v. Sec. Dep't of Corr.*, 750 Fed. Appx. 915, 938 n.14 (11th Cir. 2018).

Thomas is under sentence of death in a state that leads the nation the number of death row exonerations. There are issues that Bonner failed to plead when she was sacrificing his guaranteed right to seek federal habeas review of his constitutional claims. It is a violation of due process for her abandonment of Thomas to entitle him to equitable tolling, but operate to foreclose federal habeas review of Thomas's substantive claims which Bonner abandoned.

This Court should grant a writ of certiorari in order to demonstrate to the public that the Due Process Clause means that the courts of this country's courts remain committed to insuring court proceedings are fundamentally fair.

CONCLUSION

This Court should grant a writ of certiorari to review the decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail to Janine Robinson, Assistant Attorney General, Office of the Attorney General, PL-01, the Capitol, Tallahassee, FL 32399-1050, on October 14, 2021.

s/ Martin J. McClain
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